

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

Civil Revision No.2478 of 1989
Date of decision: February 7,2007

Shiv Dayal V. Umed Singh etc.

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Harminderjit Singh ,Advocate, for the petitioner.

Viney Mittal,J.(Oral)

On a request made by the learned counsel for the petitioner, the present petition is treated to be a petition filed under Article 227 of the Constitution of India.

The present petition has arisen out of execution proceedings. The petitioner before this court is a decree holder. He had filed a suit for possession by way of pre-emption. His suit was decreed by the trial Court on September 13,1983. The decree passed by the trial court was upheld by the first appellate Court as well as by this Court, when the first and second appeals filed by vendees were dismissed.

After the said decree had attained finality, the decree holder/pre-emptor filed an execution application, for executing the said decree. In the meantime, Section 15 of the Punjab Pre-emption Act was struck down by the Apex Court. Learned Executing Court relying upon a judgment of the Apex Court in Atam Parkash and others V. State of Haryana and another A.I.R. 1986 S.C. 859 held that the execution proceedings for executing a decree of pre-emption passed on a ground, which was no more available, could not proceed. Consequently, the execution proceedings filed by the decree holder were dismissed.

Even an appeal filed by the decree holder-petitioner failed before the first appellate Court.

Learned counsel for the petitioner has relied upon a subsequent judgment of the Hon'ble Supreme Court of India in Shyam Sunder and others V. Ram Kumar and another A.I.R. 2001 S.C. 2472 to contend that the decree of pre-emption which had already attained finality could not be held to be non-operative and was liable to be executed in accordance with law.

Without expressing any opinion on the merits of the controversy but keeping in view the contention raised by the learned counsel for the petitioner, I dispose of the present petition and set aside the orders passed by the courts below and remit the matter back to the learned executing court for fresh decision on execution petition filed by the petitioner/decreed holder.

The petitioner/decreed holder as well as the Judgment debtor-respondents would be at liberty to take all such pleas as are available to them in accordance with law before the executing Court.

A copy of the order be given dasti on usual charges.

February 7,2007
sks

(Viney Mittal)
Judge